IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3963 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVERNMENT EMPLOYEES COOPERATIVE STORES LTD

Versus

STATE OF GUJARAT

Appearance:

MR TEJAS KARIA for Petitioner No. 1

MR AD OZA for for the respondents

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/03/2004

ORAL JUDGEMENT

1. The petitioner is a cooperative society registered under the Bombay Cooperative Societies Act, 1925 and is deemed to have been registered under the Gujarat Cooperative Societies Act.

2. The petitioner society was issued a licence for

running fair price shop in the year 1998. On 9th March 1995, inspection was carried out and stock of Rs.54359/- was seized for the alleged breach mentioned in the show-cause notice dated 27th march 1995. The petitioner society filed reply to the said show-cause notice on 3rd April 1995 and after hearing the petitioner the Assistant Collector, Rajkot, by his order dated 20th April 1995, passed an order for seizure of goods worth Rs.35879/-.

3. The petitioner, therefore, preferred an appeal before the State Government on 9th May 1995. The State Government has, after hearing the petitioner on 11th March 1995, rejected the appeal on 19th March 1996, whereby the order of the Collector dated 20th April 1995 was confirmed. Therefore the petitioner has filed the present petition.

4. This petition was admitted and ad interim relief was granted in terms of para 15 (B), whereby the orders of the Collector and the State Government were stayed.

5. I have heard Mr. Tejas Karia for the petitioner and Mr. A.D. Oza for the respondents. It is contended on behalf of the petitioner that the breach at serial nos.3 and 4 are accepted by the authority as "technical" and breaches mentioned at serial nos.1, 5 and 6 are not serious which call for such a huge penalty. It is contended by the petitioner that the petitioner being a cooperative society and the officers being government employees are not in a position to give full time to the society management which is run through semi-skilled people and through oversight they have not renewed the licence and thereafter on realisation of their mistake they have immediately applied for renewal of licence. Regarding the stamping of the stock, as soon as it was pointed out to the society, the same was rectified. There are no allegations of black marketing or any other illegalities. Strong reliance has been placed by the petitioner on the decision in the case of M/s Govind Karsan & Co. Vs. State reported in 1983(1) GLR 145. The relevant paragraphs 12 and 13 read as under:

> "12. Now the question to be determined in this case is, that even when the contravention proved is substantial and not technical as urged by the learned Counsel for the petitioner was it not necessary for the authorities to exercise their discretion and confiscate lesser quantity of groundnut instead of ordering to confiscate the entire quantity of groundnut found in excess of the permissible prescribed limit? In this

connection it may be pertinent to point out that the Essential Commodities Act has been enacted in the year 1955 with the preamble which reads as under:

"An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities."

Various control orders are being issued by the Central Government and the State Government under the provisions of section 3 of the Act. The object of the Act as well as that of the orders passed thereunder can be to control the production, supply and distribution of the essential commodities. Therefore, while exercising the discretion conferred under section 6A of the Act, the authorities should take into consideration the following factors before ordering to confiscate the commodity in question:

1. Is it a technical breach meaning thereby, is it only a formal contravention?

2. The contravention complained of has any bearing on the stream of supply of the commodity in the market or is it merely an incidental breach?

3. Is the dealer actuated by motives of hoarding and thereby to reap illegitimate profits?

4. Is the dealer found to have been indulging in such activity of hoarding and/or blackmarketing in past?

5. Whether the contravention complained of is likely to create an artificial situation of shortage either in the town itself or in the entire market of the commodity in question?

6. Is the dealer a petty businessman managing to make both ends meet with difficulty or is he a big trader whose insatiable hunger for profit is the motivating force behind the contravention in question?

13. These are some of the points which ought to have been taken into consideration by the authorities before ordering to confiscate the entire stock of commodity in respect of which contravention is proved. If on the facts it is found that the nature of contravention is merely technical and it has no bearing on the supply of the commodity in question and if it is not likely to disarray the stream of supply in the market, then in that case, the authorities may exercise the discretion in favour of the dealer and may order to confiscate the quantity to a lesser extent than which has been found in excess of the prescribed limit. However, it should be clear that absence of mens rea or dishonest intention would not make a contravention of the provisions of terms of licence a technical one."

Reliance has also been placed by Mr. Karia to a decision in the case of Patel Ambaram Kuberbhai Vs. State of Gujarat reported in 1998(2) GLH 533, wherein also the penalty was reduced from 50% to 25%. Mr. Karia submitted that same benefit may be given to the petitioner society also.

6. Looking to the facts and circumstances of the case it is clear that there was no intention to make profit out of alleged breach by the petitioner. In my view, in absence of any dishonest intention, the alleged breach does not call for such imposition of huge penalty. Therefore, on the particular facts and circumstances of the case and in view of the aforesaid decisions, there is sufficient justification for modifying the impugned order by reducing the penalty.

7. In the premises aforesaid, the petition partly succeeds. The impugned order dated 19.4.1996 is modified to the extent that the goods worth Rs.17940/- may be confiscated or the petitioner may pay the sum of Rs.17940/- with an assurance that in the future the office-bearers of the petitioner will take care to see that such breaches are not committed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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